

CHARGE: Between 3-8-55 and 4-6-55, *Seconal Sodium capsules* were dispensed 4 times, *Butazolidin tablets* were dispensed twice, and *Pentids tablets* were dispensed once upon requests for prescription refills without authorization by the prescribers.

PLEA: Guilty.

DISPOSITION: 2-18-57. Fine of \$500 against corporation, \$300 against Spagnolo, and \$200 against Greenblatt.

5096. (F. D. C. No. 36597. S. Nos. 82-156/8 L, 82-163/5 L.)

INDICTMENT RETURNED: 10-27-54, W. Dist. Mo., against Black's Prescription Shop, Inc., Kansas City, Mo., Lorren R. Black (president), and Virgil L. Haag and George E. Nicholas (pharmacists).

CHARGE: Between 2-10-54 and 3-4-54, *tablets containing a mixture of sulfadiazine, sulfamerazine, sulfamethazine, and penicillin G potassium* (counts 1, 2, and 3) and *tablets containing phenobarbital* as one of the ingredients (counts 4, 5, and 6) were each dispensed 3 times upon requests for prescription refills without authorization by the prescriber.

PLEA: Not guilty—by corporation and Black to all counts of the indictment; by Haag to counts 1 and 3; and by Nicholas to counts 4 and 6.

DISPOSITION: On 11-3-55, a motion for dismissal of the indictment as to Lorren R. Black was filed; on 11-22-55, the court entered the following order in denial of such motion:

DUNCAN, *Chief Judge*: "On October 27, 1954, the defendants were charged in six counts of an indictment with violating § 353 (b) (1) (B), Title 21 U. S. C. as amended. The first count of the indictment charges:

That thereafter, on or about February 19, 1954, and while a number of tablets of said drug were being held for sale after shipment in interstate commerce, as aforesaid, at Black's Prescription Shop, Inc., 1125 Grand Avenue, Kansas City, Missouri, the said Black's Prescription Shop, Inc., a corporation, organized and existing under the laws of the State of Missouri, and trading and doing business at Kansas City, Missouri, and Lorren R. Black, at the times hereinbefore mentioned president and treasurer of said corporation, and Virgil L. Haag, an individual, at the times hereinbefore mentioned a pharmacist for said corporation, the *defendants* herein, did, at Kansas City, Missouri, within the Western Division of the Western District of Missouri, cause a number of tablets of said drug to be dispensed in a vial to one James R. Green, upon his request for a refill of a written prescription identified as No. 487494, without obtaining authorization by the prescriber.

* * * * *

That said act of causing the dispensing of said drug, as aforesaid, was an act caused to be done by said *defendants*, contrary to the provisions of 21 U. S. C. 353 (b) (1), which resulted in said drug in said vial being misbranded while held for sale, in violation of Title 21, United States Code, Section 331 (k). [Emphasis supplied.]

"The defendant Lorren R. Black has filed a Motion to Dismiss the indictment as to him. Accompanying the Motion to Dismiss is a stipulation which has been filed by the District Attorney and the attorney for the defendants, stipulating—

That the defendant Lorren R. Black did not physically participate in any act charged to have been caused, done or performed by him, as alleged in Counts I to VI inclusive of the Indictment herein.

"Said defendant insists that in view of the stipulation that this defendant did not physically participate in any act charged, absolves him from all criminal responsibility in connection with the violation of the statute. The question has been passed on in *U. S. v. Dotterweich*, 320 U. S. 1. c. 281 in which the Court said:

The prosecution to which Dotterweich was subjected is based on a now familiar type of legislation whereby penalties serve as effective means of regulation. Such legislation dispenses with the conventional requirement for criminal conduct—awareness of some wrongdoing. In the interest of the larger good it puts the burden of acting at hazard upon a person otherwise innocent but standing in responsible relation to a public danger.

"The fact that the defendant Black did not actually participate in the offense, would not absolve him from responsibility. Whether a lack of knowledge of it (which is not revealed here) would absolve him from responsibility is a matter which will have to be determined upon a trial of the case. The indictment charges an offense against said defendant. The stipulation, which says the act was not actually done or participated in by the said defendant, is not a defense under the statute.

"The Motion to Dismiss must therefore be, and is hereby, overruled."

The case came on for trial before the court without a jury on 3-13-56, and at the conclusion of the Government's evidence, the court granted a motion for the acquittal of Lorren R. Black. The other defendants rested their case without offering testimony and submitted motions for acquittal. The matter was taken under advisement by the court; and on 5-4-56, after consideration of the evidence and the briefs of counsel, the court found that the defendants, namely, Black's Prescription Shop, Inc., Virgil L. Haag, and George E. Nicholas, were not guilty as second offenders under the Act, as alleged in the indictment, since no evidence had been submitted to identify and prove that these defendants were second offenders. The court did find, however, that such defendants were guilty as first offenders with respect to the offenses charged and imposed a fine of \$600 against the corporation, \$200 against Virgil Haag, and \$200 against George Nicholas.

5097. (F. D. C. No. 38591. S. Nos. 29-530 M, 30-010 M.)

INFORMATION FILED: 3-21-56, Dist. N. J., against John J. Mayer, t/a Newton Drug Store, Newton, N. J.

CHARGE: Between 8-18-55 and 8-31-55, *Bicillin tablets* were dispensed once without a prescription, and *Dexedrine Sulfate tablets* were dispensed once upon request for a prescription refill without authorization by the prescriber.

PLEA: Guilty.

DISPOSITION: 4-27-56. \$200 fine.

5098. (F. D. C. No. 38557. S. Nos. 7-057 M, 7-061/2 M.)

INFORMATION FILED: 12-27-55, Dist. Colo., against Kenneth H. Kimball and Donald E. Meyer (pharmacists for the Walgreen Drug Store, 235 16th Street, Denver, Colo.).

CHARGE: Between 3-28-55 and 4-15-55, *thyroid tablets* (count 2) and *Dexedrine Sulfate tablets* (count 3) were each dispensed once without a prescription, and *cortisone acetate tablets* (count 1) were dispensed once upon request for a prescription refill without authorization by the prescriber.

PLEA: Guilty—by Kimball to count 1 and by Meyer to counts 2 and 3.

DISPOSITION: 5-18-56. Each defendant fined \$100 and placed on probation for 6 months.